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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,988	12/19/2001	Thomas Harold Roessler	KCC-15,369	3706
7590 04/20/2004				
Alyssa Dudkowski, Esq. Kimberly-Clark Corporation 401 N. Lake Street Neenah, WI 54956				
		EXAMINER		
		AFTERGUT, JEFF H		
		ART UNIT PAPER NUMBER		
		1733		

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No. 10/024,988	Applicant(s) ROESSLER ET AL.	
	Examiner Jeff H. Aftergut	Art Unit 1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 14, 15, 18-21 and 23-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14, 15, 18-21 and 23-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102/103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 2, 15, 18-21, 23-32 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Baird for the same reasons as expressed in paper no. 8, paragraph 4.

The applicant is advised that Baird suggested that untensioned elastic material would have been applied upon a substrate used in the manufacture of a disposable diaper wherein the elastic material was rendered elastic after manufacture by application of heat, applicant is referred to column 2, lines 50-59, column 3, lines 4-8 and column 3, lines 14-26. The reference suggested that the elastic was applied in an untensioned state upon the material and that the material would have laid flat after affixing such an untensioned material and that after the undergarment was manufactured one skilled in the art would have applied heat to activate the elastic (whereby after formation the garment was disposed in a flat condition initially prior to application of heat to the assembly. While the reference to Baird did use a tensioned elastic in a restrained state against a rigid material in the invention described therein, the reference clearly described the prior art to the invention as including the use of untensioned latent heat activated elastics in the operation of making an garment such as a disposable diaper and such was clearly in the public domain at the time the invention was made.

3. Claim 33 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Reiter.

Reiter suggested that it was known at the time the invention was made to apply an elastic which is heat unstable and molecularly oriented to a backsheet of a disposable diaper in an untensioned state, see column 4, lines 53-column 5, line 5 and in particular column 4, lines 65-68. The reference suggested that these heat unstable materials would have been applied upon a backsheet of a web as set forth at column 8, line 38-column 10, line 3, where the materials which were heat shrinkable and elastic were attached to the topsheet and the backsheet, column 10, lines 59-65. The backsheet materials employed included polyethylene films which were of a thickness of .04 mm, column 13, lines 64-67. While the reference did not express that these films were laterally extendable, one skilled in the art would have expected that the same was true as an intrinsic property of such thin film materials. Additionally, one skilled in the art at the time the invention was made would have been expected to utilize conventional materials for the topsheet and/or backsheet in the undergarment and such materials included thin films which had the requisite properties identified as was known per se in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an untensioned elastic material and attach the same to an extensible web of material in undergarment manufacture as such would have facilitated high speed manufacture as evidenced by Reiter.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-11, 15, 18-21, 23-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baird in view of either one of Reiter, Lancaster, or E.P. 650,714 for the same reasons as presented in paper no. 8, paragraph 6.

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Applicant is referred to the fact that the reference to Baird suggested that one skilled in the art would have utilized a heat shrinkable elastic material. In the event that the applicant does not agree with the posit that a heat shrinkable material was untensioned and applied to the substrate, the reference to E.P. '714 clearly suggested that the elastic therein was an alternative to Baird (column 1, lines 20-column 2, line 7) where the elastic member of the composite elastic was not in a tensioned state in the process of forming the same.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 5 further taken with Roessler et al or Wideman for the same reasons as expressed in paper no 7, paragraph 8.

Response to Arguments

7. Applicant's arguments filed 3-2-04 have been fully considered but they are not persuasive.

The applicant essentially argues only that Baird failed to teach the claimed invention because the reference required in the formation of the composite elastic that one skilled in the art would have applied the elastic in a tensioned state (in the manufacture of the composite elastic component) and therefore when the elastic was applied to the substrate web it was in fact applied in a tensioned and restrained state to the same. The applicant is advised as addressed in paper no. 8, that Baird additionally suggested that one skilled in the art of manufacturing a disposable diaper with high speed manufacture would have known to apply the elastic in an untensioned state when utilizing heat shrinkable elastic materials. The reference therefore evidenced that it was within the public domain to apply the elastic in an untensioned state to the web in the

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manufacture of the undergarment. While it is agreed that Baird appears to offer an improvement over this heat shrinkable elastic material, the reference nonetheless clearly taught that heat shrinkable elastics applied in an untensioned condition would have been known to the ordinary artisan.

It should be noted regarding the other rejections that the applicant merely reiterates that the reference to Baird taught away from the claimed invention by using the tensioned elastics in the composite elastic assembly. This does not dispute the fact that it was in the public domain to utilize the heat shrinkable elastics in the operation where the elastics were applied to the web in an untensioned state. Additionally, the applicant has failed to address the other references applied like Reiter, Lancaster, and E.P. '714. As such, it is deemed that applicant agrees with the Office interpretation of these references and what they teach. Additionally, note that in paper no. 8, paragraph 6, the specific materials for the backsheet and/or topsheet were taken as conventional in the art and applicant has not responded to the same. It is therefore deemed that applicant has acquiesced the same.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference to Enloe suggested that a backsheet made from spunbonded and microporous films were known to those skilled in the art.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

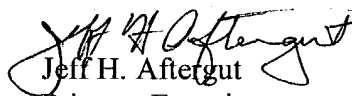
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
April 15, 2004